

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Bruce Reed Jr.,

Complainant,

PROBABLE CAUSE  
ORDER

vs.

Todd Ouellette,

Respondent.

On November 13, 2006, this matter came on for a probable cause hearing, which was held by telephone conference call before Administrative Law Judge Eric Lipman to consider a campaign complaint filed by Bruce Reed Jr. on November 6, 2006. The Respondent failed to appear. The probable cause hearing was rescheduled to take place on November 22, 2006. The record with respect to the probable cause hearing closed at the conclusion of the hearing on November 22, 2006.

The Complainant, Bruce Reed, Jr., 1070 Gilmore Avenue, Winona, MN 55987, participated by telephone on his own behalf without counsel. There was no appearance made by, or on behalf of, the Respondent, Todd Ouellette.

Based on the record and all of the proceedings in this matter, and for the reasons set forth in the Memorandum below, the Administrative Law Judge finds that there is probable cause to believe that the Respondent violated Minnesota Statutes § 211B.06.

**ORDER**

**IT IS ORDERED:**

1. That the Respondent is in default by virtue of his failure to appear at the probable cause hearing;
2. That the Complainant's allegations contained in the Complaint are accepted as true and deemed proved without further evidence;
3. That there is probable cause to believe that Respondent violated Minnesota Statutes § 211B.06 as alleged in the Complaint; and
4. That this matter is referred to the Chief Administrative Law Judge for assignment to a panel of three Administrative Law Judges to consider the appropriate disposition of the Complaint pursuant to Minnesota Statutes § 211B.35.

Dated: November 29, 2006

/s/ Eric L. Lipman  
ERIC L. LIPMAN

Tape recorded (one tape).

### MEMORANDUM

Respondent Todd Ouellette ran unsuccessfully as a candidate for Winona City Council in 2006. He was challenging incumbent councilman, Gerry Krage, who was re-elected. The Complaint alleges that Respondent violated Minnesota Statutes § 211B.06 by disseminating campaign material that falsely claimed that Bruce Reed and Gerry Krage had a "role in extorting over \$100,000 from the American Legion Veterans Association."

Minn. Stat. § 211B.06, subd. 1, prohibits intentional participation:

... [i]n the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

On November 7, 2006, Administrative Law Judge Eric Lipman determined that the Complaint set forth a *prima facie* violation of Minnesota Statutes § 211B.06 and ordered that the matter be scheduled for a probable cause hearing to be held by telephone conference at 9:30 a.m. on Monday, November 13, 2006. A Notice of and Order for Hearing was sent by United States mail and electronic mail to both parties on November 7, 2006.

On November 10, 2006, the Respondent submitted by facsimile transmission, a five-page response to the Complaint, which included a request that the undersigned Administrative Law Judge recuse himself from presiding over this matter based on alleged conflicts of interests related to the undersigned's prior employment positions as Governor Pawlenty's State Sex Offender Policy Coordinator, Governor Pawlenty's Acting General Counsel, and former Senator Rod Grams' political director.

On November 13, 2006, at 9:30 a.m., the Complainant, Mr. Reed, participated in the probable cause hearing by telephone on his own behalf and without counsel. The Respondent failed to call into the telephone conference and participate in the probable cause hearing, and no appearance was made on his behalf. The Administrative Law Judge waited approximately 15 minutes to begin the hearing, while OAH Staff Attorney Mary Beth Gossman attempted to reach the Respondent by telephone without success. Ms. Gossman left a message on the Respondent's voice mail directing him to call into the scheduled

conference. The Respondent never called into the conference, and Judge Lipman adjourned the hearing at approximately 10:00 a.m.

At approximately 2:15 p.m. on November 13, 2006, the Office received an e-mail from a Kara Stroud on behalf of Mr. Ouellette. Ms. Stroud stated in her e-mail that the Respondent was ill and bed-ridden and that he was unable to leave his apartment to use a pay phone to participate in the probable cause hearing. Ms. Stroud also stated that the Respondent would be incapacitated for "at least a few more days."

On November 14, 2006, Administrative Law Judge Lipman issued a Notice and Order rescheduling the probable cause hearing in this matter to Wednesday, November 22, 2006, at 9:30 a.m. The Order further directed the Respondent to: (a) submit an affidavit of prejudice by 4:30 p.m. on Monday, November 20, 2006, explaining the basis for his belief that Administrative Law Judge Lipman was disqualified by reason of bias or prejudice, and (b) to show cause at the rescheduled hearing why his failure to appear at the probable cause hearing on November 13, 2006, should not result in the entry of a default judgment against him. The Order also informed the Respondent in bold-face type that:

**A failure by the Respondent to participate and appear by telephone at this probable cause hearing may result in a finding that the Respondent is in default, that the Complainant's allegations contained in the Complaint may be accepted as true, and that the Presiding Administrative Law Judge may dispose of the Complaint according to Minn. Stat. § 211B.35, subd. 2.**

The Order Rescheduling the Probable Cause Hearing and Order to Show Cause was sent to the parties by United States mail and sent to the Respondent by electronic mail. However, because the Respondent's post office box number was listed incorrectly on the envelope, the Order was returned to the Office of Administrative Hearings. It was resent by U.S. mail on November 21, 2006. Nonetheless, the Respondent received a copy of the Order by electronic mail on or about November 14, 2006.

Pursuant to Judge Lipman's Order of November 14, 2006, the Respondent filed an Affidavit of Prejudice by facsimile transmission on November 20, 2006. By Order dated November 21, 2006, the Chief Administrative Law Judge denied the Respondent's request to remove or disqualify Judge Lipman based on the Respondent's Affidavit of Prejudice. The Order further directed that the matter proceed to the probable cause hearing as scheduled at 9:30 a.m. on November 22, 2006. This Order of the Chief Administrative Law Judge denying the Respondent's request to remove Judge Lipman was sent to the parties by United States mail and sent to the Respondent by electronic mail on November 21, 2006. In the e-mail attaching the Order, Staff Attorney Gossman notified the Respondent that the probable cause hearing would take place at 9:30 a.m. on

November 22, 2006, as scheduled, and reminded the Respondent of the telephone number and numeric code he was required to enter in order to participate in the hearing.

On November 21, 2006, at 4:00 p.m., the Respondent sent a responsive e-mail to Ms. Gossman in which he stated that he looked forward to the “same old politicized [sic] farcicle [sic] hearing as I always get.”

On November 22, 2006, at 9:30 a.m., the Complainant participated in the probable cause hearing by telephone on his own behalf and without counsel. The Respondent, Mr. Ouellette, failed to appear and participate at the probable cause hearing. Further, Mr. Ouellette did not contact the Administrative Law Judge or Staff Attorney Gossman to request a continuance. The Administrative Law Judge waited approximately 15 minutes to begin the hearing while OAH Staff Attorney Gossman attempted to reach the Respondent by telephone without success.

Because the Respondent failed to participate in the probable cause hearing as ordered, he is in default. The allegation in the Campaign Complaint that the Respondent violated Minn. Stat. § 211B.06 by preparing and disseminating false campaign material is taken as true and is deemed proved without further evidence.

This matter will be referred to the Chief Administrative Law Judge for assignment to a panel of three Administrative Law Judges to consider the appropriate disposition of the Complaint. The panel will determine whether the Respondent’s violation of Minn. Stat. § 211B.06 warrants the issuance of a reprimand, imposition of a civil penalty, or referral of this matter to the appropriate county attorney for possible criminal charges.<sup>[1]</sup>

E.L.L.

<sup>[1]</sup> Minn. Stat. § 211B.35, subd. 2.